

# Exhibit B-1

CAUSE NO. 2021DCV-0095-E

MARTY AGUILAR,	§	IN THE DISTRICT COURT
Plaintiff,	§	§
v.	§	NUECES COUNTY, TEXAS
COCA-COLA BEVERAGES, LLC	SOUTHWEST	§
Defendant.	§	JUDICIAL DISTRICT

### PLAINTIFF'S ORIGINAL PETITION

Marty Aguilar ("Plaintiff" or "Mr. Aguilar") files his Original Petition against Coca-Cola Southwest Beverages, LLC ("Defendant" or "Coca-Cola") as follows:

#### I. DISCOVERY

Plaintiff intends to conduct discovery under Level 2 of TEX. R. CIV. P. 190.

#### II. NATURE OF ACTION

1. This is a negligence and gross negligence cause of action. Because of Defendant's negligence and gross negligence, Plaintiff sustained debilitating injuries to his left foot, that ultimately necessitated a below knee amputation, while performing work for Defendant.

#### III. PARTIES

2. Plaintiff is an individual who resides in Nueces County, Texas, and is a resident of Texas.

3. Defendant is a foreign limited liability company that does business in the State of Texas and Nueces County that may be served with service of process by serving its registered agent for service of process, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, at 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701.

**IV. JURISDICTION AND VENUE**

4. Venue is proper in Nueces County, Texas, pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to Plaintiff's claims against Defendant occurred in Nueces County, Texas.

5. This Court has subject matter jurisdiction because the amount in controversy exceeds the minimum jurisdictional amount of this Court.

**V. FACTUAL BACKGROUND**

6. On or about July 18, 2020, Mr. Aguilar was performing work for Coca-Cola at 5126 Greenwood Drive in Nueces County, Texas ("the Site" or "the Premises"). At the direction of Defendant, Plaintiff operated a rider pallet jack ("Rider Pallet Jack"). In the process of so doing, Plaintiff's left foot was struck by the Rider Pallet Jack, resulting in crush injuries to Plaintiff's left foot, that ultimately necessitated a below knee amputation ("the Incident").

**VI. NEGLIGENCE AND GROSS NEGLIGENCE OF DEFENDANT**

7. Plaintiff incorporates all factual allegations made above.

8. Defendant was negligent by virtue of certain acts and/or omissions, including, but not limited to:

- a. failing to institute and enforce proper and effective safety programs, instruction, supervision, and training;
- b. failing to properly warn and instruct Plaintiff;
- c. failing to provide proper and effective equipment to allow Plaintiff to safely perform his work; and
- d. failing to provide Plaintiff with a safe work place.

9. Each of the above-listed acts and/or omissions, taken singularly or in any combination, rise to the level of gross negligence/ "malice." Defendant's acts and omissions, when viewed objectively from the standpoint of the actor at the time of its occurrence, involved an

extreme degree of risk, considering the probability and magnitude of harm to others. Defendant had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. Therefore, Defendant's conduct amounts to gross negligence for which Defendant is liable for exemplary damages.

**VII. CAUSATION AND DAMAGES**

10. Plaintiff incorporates all factual allegations made above.
11. As a proximate result of Defendant's negligent acts and/or omissions, Plaintiff has suffered in the past and will continue to suffer in the future: medical, nursing and life-care expenses; loss of earning capacity; loss of her own household services; pain and suffering; mental anguish; emotional distress; physical impairment; loss of enjoyment of life; and permanent disfigurement.
12. Pursuant to Rule 47(c) of the Texas Rules of Civil Procedure, Plaintiff seeks monetary relief over \$ 1,000,000.

**VIII. ALTERNATIVE PLEADINGS**

13. To the extent facts and/or causes of action pled in this Original Petition are in conflict, they are pled in the alternative.

**IX. JURY DEMAND**

14. Plaintiff demands a trial by jury on all of his claims.

**X. RULE 193.7 NOTICE**

15. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiff hereby gives notice that all documents produced by Defendant in response to any discovery request may be used at any pretrial proceeding or in the trial of this matter.

**XI. PRESERVING EVIDENCE**

16. Plaintiff request that Defendant preserve and maintain all evidence pertaining to

any claim or defense related to the Incident made the basis of this lawsuit or the damages resulting therefrom. Failure to maintain such evidence will constitute “spoliation” of the evidence.

**XII. REQUEST FOR DISCLOSURES**

17. Plaintiff requests that Defendant provide Plaintiff with the information or material described in Rule 194.2(a)-(l) of the Texas Rules of Civil Procedure at the office of the undersigned counsel within fifty (50) days of service of this document.

**XIII. PRAYER**

18. Plaintiff prays that judgment be entered against Defendant for the following:

- a. actual damages;
- b. all costs of court expended herein;
- c. pre-judgment and post-judgment interest at the maximum rate allowed by law;
- d. exemplary/punitive damages; and
- e. all other relief to which Plaintiff is justly entitled.

Dated: January 7, 2021  
Houston, Texas

Respectfully submitted,

CEDILLOS LAW FIRM, PLLC

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